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(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Joseph Peiris et al.	Confirmation No.: 4585
Application No.: 10/808,187	Art Unit: 1648
Filed: March 24, 2004	Examiner: Mary Mosher
For: A DIAGNOSTIC ASSAY FOR THE HUMAN VIRUS CAUSING SEVERE ACUTE RESPIRATORY SYNDROME (SARS)	New York, NY May 4, 2005

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed April 4, 2005, applicants hereby provisionally elect, with traverse, Group I (claims 1-3 and 11-21) for continued examination.

The Examiner has required restriction among the following Groups:

Group I: Claims 1-3 and 11-21, drawn to SARS diagnostic method, probes & primers used therein, classified in class 435, subclass 5;

Group II: Claim 4, drawn to nucleic acid, classified in class 536, subclass 23.72;

Group III: Claims 5-8, drawn to polypeptide, classified in class 530, subclass 350; and

Group IV: Claims 9-10, drawn to antibody, classified in class 530, subclass 387.9.

Further, the Office Action requires that if Applicants elect Group I, Applicants are also to elect one of the following:

(A) PCR assay using SEQ ID NOS:2471-2473; and

(B) PCT assay using SEQ ID NOS:2474-2476.

If Applicants elect one of Groups II-IV, Applicants are also to elect a single disclosed species among the sequences of SEQ ID NOS:2471-2476.

Applicants respectfully traverse the requirements for selecting a single nucleotide sequence within the selected group.

According to the MPEP § 803.04, nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another, and, thus, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement under 35 U.S.C. § 121 and 37 C.F.R. § 1.141. However, such restriction requirements have been partially waived *sua sponte* by the Commissioner (see *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68, November 19, 1996) and "it has been determined that normally ten (10) sequences constitute a reasonable number for examination purposes" and "in most cases, up to ten independent and distinct nucleotide sequences, will be examined in a single application without restriction (the MPEP § 803.04)." The same section of the MPEP further states that "nucleotide sequences encoding the same protein are not

considered to be independent and distinct inventions and will continue to be examined together."

In the present application, the nucleotide sequences recited in the claims of each Group are ***only six (6) sequences***, *i.e.*, SEQ ID NOS:2471, 2472, 2473, 2474, 2475 and 2476. Thus, even though each of these nucleotide sequences may be presumed to be an independent and distinct invention and each requires an independent search of the sequence databases, Applicant respectively submits that such searches should not cause undue burdens on the examiner's part and six (6) sequences are reasonable number of sequences for examination purposes.

Accordingly, Applicants respectfully request that the requirement for selecting a single nucleotide sequence within an elected Group be withdrawn.

Nevertheless, in order for the response to the Office Action to be complete, Applicants further provisionally select the examination of the subgroup (A), nucleotide sequences of SEQ ID NO:2471-2473.

No fee is believed to be due for this submission. Should any fee(s) be required, please charge such fee(s) to Deposit Account No. 50-2215.

Dated: May 4, 2005

Respectfully submitted,

By _____ 24,576

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